

22. EMPLOYEE ORGANIZATIONS

22.1: Definition

“Petitioners take the position that the “County Option” portions of recent contracts between AFSCME, the Craft Council and the department can serve as a springboard to avoid the above, well recognized rule against partial disestablishment of an existing bargaining unit. I would find otherwise. I find no where in the statute or other authorities cited ... the distinction between a bargaining unit and a representative unit for purposes of this issue.” **DC #5-75**

“American Federation of State, County and Municipal Employees Montana Council No. 9 and American Federation of State, County and Municipal Employees Local 1620 are excluded by definition from coverage by [the Labor-Management Reporting and Disclosure Act of 1959] which excludes public employee organizations from its definition of labor organization. **29 USC 402. See *Smith v. Professional Employees*, 125 LRRM 3294, 821 F.2d 355, 1987 CA 6.” ULP #62-89.**

22.2: Membership

“[S]ubstance more than form governs. The all-important criterion for determining the existence of group membership is evidence, especially conduct, evincing an unequivocal intent to be bound in collective bargaining by group, rather than individual, action. Participation in group bargaining, where it is understood that the action by the group binds all members of the group, is given controlling consideration.... If the individual employer or union evinced an intent at the outset of negotiations to be bound by group action, then the individual member will be bound by group, rather than individual action.” **ULP #26-79**

“All services as mandated by the definition [of labor organization] are provided to the Petitioners through the Craft Council or through a component of the Craft Council – Local 1023.” **DC #2-81**

“Since the exclusive representative can only represent bargaining unit members, a person who has rights under a collective bargaining agreement negotiated between an employer and a specific exclusive representative, must be a member of the bargaining unit.” **DV #8-81 District Court (1982)**

See also **ULP #34-78.**

22.21: Membership — Expulsion or Suspension

“In a decision dated January 9, 1990, Jeane Lambie, American Federation of State, County and Municipal Employees Judicial Panel Member found the Complainant guilty of violating American Federation of State, County and

Municipal Employees International Constitution and expelled him from membership.” **ULP #64-89.**

See also **ULP #62-89.**

22.3: Duties and Responsibilities

See **ULP #62-89.**

22.4: Jurisdiction

“Public employers have the right to recognize labor organizations for units of employees. Certification by Intervenor Board is not necessary, nor is a determination by that Board of “an appropriate unit” required under the Public Employees Collective Bargaining Act.” **DC #5-75 District Court (1979)**

See also **DC #5-75.**

22.41: Jurisdiction – Exclusive Representation [See also 31.]

“In consequence of the long bargaining history, the exclusive recognition granted the craft Council and the negotiation of a single labor contract, there exists only a single bargaining unit.... It is clear that the common intention of the five component unions is to be bound by group negotiations.... It is apparent that the Parties have bargained in a single, multicraft bargaining unit.” **DC #2-81**

“The five unions [Teamsters No. 23, Operators, Machinists, Laborers, and Painters], known as the Craft Council, are the exclusive representatives.” **DC #2-81**

“I conclude that the City of Great Falls did not violate Sections **39-31-401(1) and (5) MCA** by refusing to bargain with Plumbers Union and I.B.E.W. Union for the employees working as Plumbers and Inspectors. I conclude this because the complainants are covered by and bound by the Craft Council Contract.” **ULP #26-79**

See also **#2-75.**

22.52: Employee Organization Activities – Internal Affairs

“The focus of the evidence on the record centers around the election conducted by Local 1023 during the spring and summer of 1980 which ultimately resulted in a dues increase for the Complainants... [T]he core of the factual dispute raised here is whether the elections held during 1980 were conducted in violation of the standards and safeguards called for under **39-31-206, MCA**.... In the absence of rules fully setting forth exact requirements or clearer

guidelines concerning the general statutory requirements of **39-31-206, MCA** [related to elections], the most that I believe can be required is the following: (1) adequate notice of the election and its purpose; (2) all members in good standing must be eligible to vote; (3) voting by secret ballot by eligible voters; and (4) approval of the issue by a majority of the voters. To those specific requirements a general rule of fairness should be added.” **CC #2-81**

See **ULPs #29-84 and #62-89.**

22.53: Employee Organization Activities — Intra-Union Disputes

See **ULP #62-89.**

22.56: Employee Organization Activities — Political Activities

See **ULPs #62-89 and #64-89.**

22.57: Employee Organization Activities — Discipline of Members

See **ULPs #62-89 and #64-89.**

22.6: Organization Structure

“The Coalition exists as an entity in and of itself. The fact that a member of the Coalition [AAUP] has withdrawn from that entity is an internal matter which must be resolved by the Coalition....” **DC #8-77**

22.61: Organization Structure – Constitution and By-Laws

“[T]he bylaws of the Craft Council and of Local 1023... incorporate by reference the constitution of the international....” **CC #2-81**

“Under the provisions of **39-31-206 MCA** the exclusive representative, Local 1023, has written bylaws which provide for and guarantee the following rights and safeguards: (a) democratic organization and procedures, (b) adequate standards for the conduct of elections; (c) controls for the regulation of officers having fiduciary responsibility; and (d) sound accounting and fiscal controls, including quarterly audits.... The practices of Local 1023 conform to those rights and safeguards.” **CC #2-81**

22.7: Representatives

“[T]he U.S. Supreme Court styled employees’ right to organize and select representatives of their own choosing as a fundamental right.... The burden is on ‘the company’ to show the presence of the disputed representative on the negotiating committee constitutes a clear and present danger to the bargaining

process.... Another court insisted that it must be demonstrated ‘that the representative in the particular dispute has gained an unethical or overreaching advantage by the misuse of specific confidential information acquired by reason of his former tenure.... Defendant offered no evidence the Jeff Minckler as representative of the union had any confidential information which would either make good faith bargaining impractical or constitute a clear and present danger to the collective bargaining process. He had agreed not to engage in economic bargaining on behalf of the union and his information on the state’s position vis-à-vis money was outdated.... Defendant ... may not use Jeff Minckler’s presence on the union side of the bargaining table as an excuse not to bargain.”
ULP #30-78

“In their Detailed Statement filed with this Board on November 24, 1981, Complainants made a number of allegations which amounted to nothing more than disagreement with the quality of representation they believe they are entitled to received from the union. Those questions may well be proper where the issues raised are concerned with a duty of fair representation. They are not matters which proceedings under Section 206 can be expanded to include.”
CC#2-81

22.71: Representatives – Officials

Under the constitution of the Montana Education Association, “neither the President, Executive Secretary, any staff member or legal counsel of the Montana Education Association have the power to interfere with the authority of the President of a local unit.... There is no indication that members of the unit question [the local President’s] authority to do those incidental acts which are customarily done by such an agent – such as signing a stipulation waiving the rules of the Board of Personnel Appeals.” **DC #4-83**